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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-027

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Sections PSC 113.0409, 113.0410 (2) and 113.0412 appear to apply to a holding company which is not a public utility since there are no definitions of “holding company” in the rule. The authority for the commission to regulate this type of holding company under these provisions is not apparent. Section 196.795, Stats., limits the authority of the commission to regulate a holding company that is not a public utility to the statutes referenced in s. 196.795 (5) (a), Stats., and these statutes do not address or authorize the provisions in ss. PSC 113.0409 to 113.0412.

2. Form, Style and Placement in Administrative Code

a. The commission should review the entire rule and, as appropriate, correct the following deficiencies in drafting style or form:

- (1) A mandatory duty should be denoted in a rule through the use of “shall”; an optional provision or discretionary authority should be denoted through the use of “may.” A prohibition should be stated as “no person may . . .” or “a person may not . . .” In addition, “should,” “will,” “must” or “it is the responsibility of” should not be used to express a mandatory or permissive action. [See s. 1.01 (2), Manual.] This drafting style was not followed throughout the rule. See, for example, ss. PSC 113.0210, 113.0509 (intro.), 113.0607 (2) (b) 2., 113.0707 (5), 113.0803 (5), 113.0302 (9) (a) and 113.0923.

- (2) The use of parentheses is not the preferred drafting style. [See s. 1.01 (6), Manual.] Parentheses were used throughout the rule. See, for example, the treatment of ss. PSC 113.0506 (1) (b), 113.0602 (6), 113.0607 (2) (b) 2. and 4. and 113.0921 (intro.).
- (3) Use of slashed alternatives, such as “and/or,” is not the preferred drafting style. [See s. 1.01 (9) (a), Manual.] See, for example, the treatment of ss. PSC 113.0408 (1f), 113.0506 (1) (a) to (e) and 113.0602 (10).
- (4) The SECTION treatment clauses in the rule involving the renumbering of one or more sections or subunits within those sections in existing ch. PSC 113 and amending part or all of those provisions are not drafted according to the preferred drafting style. Where all provisions covered by the SECTION are renumbered and amended, the reference to “as renumbered” in the treatment clause is not necessary. For example, the treatment clause of SECTION 105 should read “PSC 113.14 is renumbered PSC 113.0413 and amended to read:”. Where the provisions being amended are a subset of those renumbered, the preferred drafting style is to refer to the provisions being amended using the lowest subunits consistent with the external reference format in s. 1.07 (2), Manual and to place the referenced provisions prior to the “as renumbered” clause. For example, the treatment clause of SECTION 157 should read: “PSC 113.53 is renumbered PSC 113.0913 and PSC 113.0913 (1) (a), (c) and (e), as renumbered, are amended to read:”.
- (5) The treatment of titles in the SECTION treatment clauses in the rule does not conform to the preferred drafting style. A title should be referenced in the treatment clause only if the SECTION only amends the title or when the title to a larger unit is being amended when a subunit is also being amended, for example, when the SECTION involves the amendment of a section title and the amendment of a subsection within the section. In these cases, “(title)” should be placed in the section heading and before the amended title in the text. For example, the text of the title of s. PSC 113.0702 in SECTION 119 should include “(title)” before the title. If a section amends a title and the unit that it heads, “(title)” should be inserted only before the amended title in the text of the unit. If the title is not amended then it should not be referenced in the SECTION treatment clause. This was not the case, for example, in SECTION 92.
- (6) Each provision in the current Wisconsin Administrative Code that is affected by a rule should be the subject of only one SECTION in the rule. In a number of instances, the rule subject to these comments renumbers an entire section in ch. PSC 113 in one SECTION and then repeals a subunit within the renumbered section in a different SECTION. See, for example, the treatment of existing s. PSC 113.16 (8) which is renumbered s. PSC 113.0406 (8) by SECTION 108 and is repealed by SECTION 23.
- (7) In renumbering or amending the titles of existing subchapters in ch. PSC 113, the rule refers to the existing subchapter as a “PART.” See, for

example, SECTION 164. Since the current version of ch. PSC 113 does not use the term “PART,” it is inappropriate for the rule to refer to the subchapters as parts. The location of subchapters and subchapter titles that are affected by the rule should be indicated in the SECTION treatment clause through the use of the phrase “(precedes s. PSC 113.xxxx).” The rule includes a number of SECTIONS that place an existing subchapter title in a new position within ch. PSC 113. See, for example, SECTION 5. To remove any ambiguity over the placement of subchapters, a preferable alternative is to repeal the existing subchapter title in a SECTION placed immediately before the treatment of the first section in the subchapter and to create the new subchapter title in an appropriately placed SECTION.

- (8) Rules should be drafted in the active voice, as the applicability of a provision drafted in the passive voice may be ambiguous. [See s. 1.01 (1) , Manual.] For example, see ss. PSC 113.0411, 113.0512 (1), 113.0803 (2) and 113.0909.
- (9) Substantive provisions or material that should be placed in a note should not be incorporated as part of a definition. [See s. 1.01 (7) (b), Manual.] This drafting style was not followed, for example, in ss. PSC 113.0602 (17) and (20) (intro.) and 113.0701 (2).
- (10) The rule contains numerous internal and external references to provisions in ch. PSC 113 that do not conform to the preferred drafting style in s. 1.07 (2), Manual. In the following examples, the corrected reference is provided: sub. (1) (a) in s. PSC 113.0303 (4) (b), this chapter, in s. PSC 113.0402 (1) (b), sub. (2) or (3) in s. PSC 113.0412 (1), sub. (2) in s. PSC 113.0507 (1), subch. IV in s. PSC 113.0601 (1), sub. (2) in s. PSC 113.0603 (3) and subs. (1) to (3) in s. PSC 113.0702 (6).
- (11) The use of subsection titles in s. PSC 113.0501 is inconsistent, contrary to s. 1.05 (1), Manual. Section PSC 113.0501 (6) has a title; other subsections in s. PSC 113.0501 do not.
- (12) The rule uses acronyms which are not defined, contrary to s. 1.01 (8), Manual. See, for example, “OSHA” in s. PSC 113.0612, “IEEE” in s. PSC 113.0701 (1), (2), (4) and (6) to (8) and “ANSI” in s. PSC 113.0702 (4).
- (13) The subdivision titles in s. PSC 113.0607 (2) (b) should be in single quotes. [See s. 1.05 (2) (e), Manual.]
- (14) The preferred format to instruct the Revisor of Statutes to insert a date within the text of a rule is to refer to the “effective date of this (section, subsection, paragraph, subdivision) . . . [revisor inserts date]”. This style was not followed in ss. PSC 113.0605 (2) and 113.0607 (2) (b) 5.

b. The commission should review and, as appropriate, correct the following deficiencies or inconsistencies in the placement of provisions in the rule:

- (1) Section PSC 113.0301 (7) (h) relates to certain conditions for reconnecting service after it has been disconnected whereas the other paragraphs in s. PSC 113.0301 (7) relate to conditions for disconnecting or refusing utility service. Similarly, s. PSC 113.0302 (7) (g) relates to reconnection of a discontinued service whereas other paragraphs in s. PSC 113.0302 (7) relate to conditions for disconnecting or refusing utility service.
- (2) The treatment of s. PSC 113.05 by SECTION 31 should be placed before SECTION 30.
- (3) The definitions in s. PSC 113.0512 (2) and (4) should be placed in a new subsection at the beginning of s. PSC 113.0512.
- (4) The placement of a new subsection numbered by an arabic number followed by a letter is usually done as part of an isolated insertion of new text into an existing rule. Since this rule extensively renumbers provisions in ch. PSC 113, the preferable placement of text treated by SECTION 97 would be to place it in s. PSC 113.0301 (2) rather than s. PSC 113.0301 (1m) and then, in SECTION 98, renumber s. PSC 113.132 (2) to (14) to s. PSC 113.0301 (3) to (15).
- (5) Text containing examples or explanatory material should be placed in a note. [See s. 1.09 (1), Manual.] This style was not followed, for example, in s. PSC 113.0602 (5) and (7).

4. Adequacy of References to Related Statutes, Rules and Forms

a. The rule incorporates a number of standards by reference. See, for example, the treatment of ss. PSC 113.0607 (2) (b) 2., 113.0701 (1), (2), (4) and (6) to (8), 113.0702 (4) and 113.0704. Consent for incorporation of these standards must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. The analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.

b. The commission should review the following vague references and, as appropriate, clarify them:

- (1) “Such other means as provided in statutory sections administered by the Public Service Commission” in s. PSC 113.01 (4).
- (2) “Federal poverty income guidelines” in s. PSC 113.012 (7m).
- (3) “Stray voltage program” and “Rural Electric Power Services Program Stray Voltage Analysis Team” in s. PSC 113.0507.
- (4) “These rules” in s. PSC 113.0706 (2).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The commission should review the following redundant phrases or terms and delete them from the rule unless they are necessary to convey the plain meaning of the rule:

- (1) “[B]ut is not limited to” in ss. PSC 113.012 (6) and 113.0513 (3) (intro.).
- (2) Duplicative definitions of “low-income or at-risk of customer” in ss. PSC 113.012 (7n) and 113.0506 (2).
- (3) “[A]s defined herein” in, for example, ss. PSC 113.0601 (2) and 113.0602 (12).
- (4) Use of “above” after a reference, such as to s. PSC 113.0603 in s. PSC 113.0604 (1) (c).
- (5) “[D]efined above” in s. PSC 113.0605 (2).
- (6) Use of “etc.” in an open-ended clause and “also” in s. PSC 113.0610 (3).

b. The rule uses at least five different terms to refer to a public utility subject to provisions in the rule. These terms, with citations to an example of their use, are “utility” in s. PSC 113.0610 (3), “electric utility” in s. PSC 113.0303 (1) (b), “retail electricity provider” in s. PSC 113.0501 (7), “public utility” in s. PSC 113.0607 and “distribution utility” in s. PSC 113.0705 (2). If there is a reason for the use of different terms, then the commission should define the terms in the rule to clarify those distinctions. Otherwise, the commission should use a consistent term throughout the text of the rule.

c. The rule contains a number of provisions that are not clear. The commission should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) Does the commission intend the provisions in ss. PSC 113.0301 (7) (h) and 113.0302 (7) (g) to contain the same requirements for disconnections of residential and of occupied dwellings in commercial and farm account disconnections? Under s. PSC 113.0301 (7) (h), the residential disconnection may be for any purpose and a utility may disconnect service under the last sentence if an “appropriate payment arrangement” has not been established. Under s. PSC 113.0302 (7) (g), the occupied dwelling disconnection may only be for nonpayment and a utility may disconnect service under the last sentence if an “appropriate arrangement” has not been established.
- (2) The relationship between a utility and a holding company, subsidiary or affiliate subject to ss. PSC 113.409, 113.0410 and 113.0412 is not clear. For example, do these provisions refer to a subsidiary of a holding company, a utility or some other entity?
- (3) The reference to “member/customer” in the column heading in the table in s. PSC 113.0507 (2) is vague. Can the commission be more specific?
- (4) In s. PSC 113.0508 (1), should “and” be “an” or “any”?

- (5) The process by which the Department of Natural Resources may change the list of counties threatened by oak wilt under s. PSC 113.0512 (8) is not clear. Has the department promulgated a rule that specifies these counties? May the department amend the list without the consent of the commission? Will the department request the commission to amend sub. (8)?
 - (6) Section PSC 113.0605 (1) requires each specified electric utility to initially submit the identified reliability performance data for the previous three years, but this subsection does not specify when this report must be submitted to the commission.
 - (7) Who is each “other person subject to this chapter” in s. PSC 113.0607 (1)? Does this person include, for example, holding companies or subsidiaries of holding companies?
 - (8) The use of “thereto” is vague and should be avoided. See, for example, s. PSC 113.0701 (5). [See s. 1.01 (9) (c), Manual.]
 - (9) The relationship of the reference to Figure PSC 113.0702.1 in s. PSC 113.0702 (7) with the requirements of sub. (7) are not clear.
 - (10) The last sentence in s. PSC 113.0706 (4) is not clear. Should “so” be substituted for “as”?
 - (11) The use of “not normally” establishing the applicability of s. PSC 113.0908 (1) creates the potential for inconsistent application of the requirement in this subsection. When are internally calculated quantities subject to the specified test?
 - (12) The rule refers to “standard nominal voltage” and to “nominal standard voltage.” See, for example, s. PSC 113.0702 (1), (3) and (5). If there is a difference between these types of voltage, then that difference should be clarified, otherwise, consistent terms should be used.
 - (13) The purpose of placing parenthetical references to see other provisions in ch. PSC 113, such as in ss. PSC 113.0903 (4), 113.0914 (1) (c) and 113.1008 (1), is not readily apparent from the text of the rule. If the purpose is to explain the provision or to alert the reader to a related requirement, then the reference should be placed in a note. If the purpose is to reference a substantive requirement in the context of the provision in which the reference is made, then the reference should be elaborated to clarify its purpose.
- d. In s. PSC 113.0210, it appears that the comma after the word “otherwise” should be deleted.
- e. In s. PSC 113.0303 (1) (a), the phrase “more than 40,000” should be replaced by the phrase “40,000 or more,” in order to entirely complement the provision in sub. (4) (b).

f. In s. PSC 113.0512 (1), (3), (5) and (7), the requirements for painting should be made consistent. Subsections (1) and (3) require painting to be applied as soon as possible, or immediately, to all final cuts, while sub. (5) provides that no painting is necessary if a tree is dead and sub. (7) says that painting is only required when safety and timing considerations permit. Also, in this section, the description of a rural site in sub. (4) should state that a rural site is not included in an incorporated village or city in order to be entirely consistent with sub. (2).

g. In s. PSC 113.0513 (3) (a), the subdivisions should be numbered 1., 2., and 3. and the subparagraphs in subd. 1. should be numbered a. to g.

h. Section PSC 113.0602 (17) uses the word “indices,” while sub. (20) uses the word “indexes.” The terminology should be made consistent.

i. In s. PSC 113.0604 (2) (b), the word “action(s)” should be replaced by the word “actions.”

j. In s. PSC 113.0604, the paragraphs following the introduction in sub. (1) should not be preceded by a designation of sub. (2). Subsection (3) then should be renumbered as sub. (2).

k. In s. PSC 113.0607 (2) (b) 6., it appears that the word “a” before the word “summarized” should be deleted.

l. Section PSC 113.0701 attempts to define the term “power quality problem.” However, the first sentence does not describe a problem. The definition should be rewritten. Also, since the rule goes to the trouble of defining the term “power quality problem,” the term should be used in the text of the rule. For example, see s. PSC 113.0705 (2).

m. In s. PSC 113.0701 (8), the final sentence is an incomplete sentence.

n. In s. PSC 113.0706 (3), the last sentence is written as an imperative. The sentence should be rewritten.

o. Section PSC 113.0707 (3) provides that “it may be necessary” to limit a utility’s responsibility. This is extremely vague and should be rewritten to read that, in certain circumstances, a utility’s responsibility will be limited.

p. In s. PSC 113.0406 (1) (i) 1., the word “forebearances” is misspelled and the comma after the word “primarily” should be deleted.

q. In s. PSC 113.0702 (1) and (3), a dated addition of IEEE Standard 519 should be provided. A probable invalid delegation of legislative authority occurs if a technical society is given the power to, in effect, amend administrative rules. See, also, s. PSC 113.0704.

r. In s. PSC 113.0811 (1) (c), should the phrase “100% full reference test current” be replaced by the phrase “100% of full reference test current at unity power factor”?

s. In s. PSC 113.1003 (intro.), the notation “PSC” should be inserted after the notation “ss.”